

## **REMARKS**

### **Summary**

Claims 1-35 stand in this application. Claims 14 and 24-35 have been amended. New claims 36-48 have been added. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 14 and 24-35 in order to facilitate prosecution on the merits.

### **Claim Objections**

Claim 32 stands objected because of claim informalities. Applicant respectfully traverses the objection based on the above amendments. Applicant respectfully submits that claim 32 has been amended to properly depend from claim 24. Therefore, Applicant respectfully requests removal of this claim objection.

### **35 U.S.C. § 112**

Claims 14-23, 30 and 32 have been rejected under 35 U.S.C. § 112 for not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to

overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

**35 U.S.C. § 101**

Claims 24-31 and 33-35 have been rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully traverses the rejection based on the above amendments. Applicant further submits that the above amendments are made to overcome a § 101 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner. Applicant respectfully requests removal of the § 101 rejection.

**35 U.S.C. § 102**

At page 4, paragraph 5 of the Office Action claims 1-8, 14-20, 24-31 and 33-35 stand rejected under 35 U.S.C. § 102 as being anticipated by United States Patent Publication Number 2004/0155909 to Wagner (“Wagner”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Wagner fails to teach each and every element recited in claims 1-8, 14-20, 24-31 and 33-35 and thus they define over Wagner. For example, with respect to claim 1, Wagner fails to teach, among other things, the following language:

dynamically and automatically sizing cells of said plurality of cells in response to the amount of said information to be displayed in said cells.

According the Office Action, this language is disclosed by Wagner at figures 8A-8G and paragraph [0089]. Applicant respectfully disagrees.

Applicant respectfully submits that Wagner fails to teach, suggest or disclose the missing language. Wagner at the given cite, in relevant part, states:

In an alternative embodiment, opening the tertiary tray 830 causes the main portion 812 to be rearranged and/or scaled. Rearranging and/or scaling the main portion 812 allows both the tertiary tray 830 and the icons 802, 804, 806, 808 and 810 to be fully displayed as shown in FIG. 8G. In another alternative embodiment, the tertiary tray 830 can "shift" main portion 812 upward to make room for the tertiary tray in the display. Shifting the main portion 812 upward can cause the main portion to appear to run off of the top edge of the display.

In contrast, the claimed subject matter teaches "dynamically and automatically sizing cells of said plurality of cells in response to the amount of said information to be displayed in said cells." Applicant respectfully submits that this is different than the above recited teaching of Wagner.

Applicant respectfully submits that Wagner, arguably, teaches rearranging or scaling a main portion of a display when a tertiary tray is manually opened following selection of a tertiary tab. Applicant respectfully submits that the display portions in Wagner are not resized "in response to the amount of information to be displayed in said cells." Rather, the resizing occurs in response to the opening of a new portion (e.g. the tertiary tray) in the display area. Applicant respectfully submits that it is apparent in

figures 8A-8L that the amount of information in the main portion remains the same after the tertiary tray is opened.

Furthermore, Applicant respectfully submits that the tertiary tray in Wagner is not dynamically and automatically sized in response to the amount of said information to be displayed. In contrast, as taught by Wagner at paragraph [0091], the tertiary tray is either always present or it is opened when the tray is selected through selection of the tertiary tab. As shown in figures 12A-12C of Wagner, and in the accompanying text, as more icons are added to the tertiary tray than can be displayed in one row or column, scrolling arrows are added to the tray to allow a user to view additional items and the tray itself is not resized. Applicant respectfully submits that adding scrolling arrows to view additional items in a display portion is different than resizing a cell in response to the amount of information to be displayed.

Applicant respectfully submits Wagner fails to teach, suggest or disclose the missing language. Consequently, Wagner fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2-8, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Wagner.

Claims 14 and 24 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 14 and 24 are not anticipated and are patentable over Wagner for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with

respect to claims 14 and 24. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 15-20, 31 and 33-35 that depend from claims 14 and 24 respectively, and therefore contain additional features that further distinguish these claims from Wagner.

**35 U.S.C. § 103**

At page 8, paragraph 7 of the Office Action claims 9-13, 21-23 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wagner in view of United States Patent Number 6,297,795 to Kato et al. ("Kato"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office

Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 9-13, 21-23 and 32. Therefore claims 9-13, 21-23 and 32 define over the cited references.

Applicant respectfully submits that if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Applicant respectfully submits, as recited above, that Wagner fails to teach, suggest or disclose each and every element recited in independent claims 1, 14 and 24. Furthermore, Applicant respectfully submits that Kato also fails to teach, suggest or disclose the missing language.

Moreover, Applicant respectfully submits that claims 9-13, 21-23 and 32 depend from independent claims 1, 14 and 24 respectively and contain additional features that further distinguish these claims from the cited references. Accordingly, removal of the obviousness rejection with respect to dependent claims 9-13, 21-23 and 32 is respectfully requested at least on the basis of their dependency from claims 1, 14 and 24. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

For at least the reasons given above, claims 9-13, 21-23 and 32 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 9-13, 21-23 and 32 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

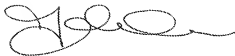
Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-48 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

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